

Serial No. : 10/657,555
Filed : Sep. 4, 2003

Remarks

By this amendment, Applicant has amended the specification and submitted a petition for acceptance of an unintentionally delayed claim of priority under 35 U.S.C. section 120. No new matter is added by this amendment.

When Applicant filed the present application, Applicant intended to claim priority to PCT Application Serial No. PCT/AU02/00249, through 35 U.S.C. 120 and 35 U.S.C. 363. Consequently, a claim of priority to the PCT application was included on the inventor's declaration filed with the present application. See attached Exhibit A. However, Applicant inadvertently omitted to include a statement in the specification referencing the claim of priority. Applicant respectfully requests the entry of the present amendment to the specification, in accordance with the petition filed herewith, to perfect Applicant's claim of priority under 35 U.S.C. 120 to the PCT application pending at the time of filing.

Under 37 C.F.R. section 1.78:

A nonprovisional application ... may claim an invention disclosed in one or more prior-filed copending nonprovisional applications or international applications designating the United States of America. In order for an application to claim the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America, each prior-filed application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior-filed

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application must be: (i) An international application entitled to a filing date in accordance with PCT Article 11 and designating the United States of America; or (ii) Entitled to a filing date as set forth in §1.53(b) or § 1.53(d) and have paid therein the basic filing fee set forth in § 1.16 within the pendency of the application.

Applicant respectfully submits that all the requirements needed to satisfy a claim of priority to PCT Application Serial No. PCT/AU02/00249 are satisfied. As shown in the PCT publication attached hereto as Exhibit B, the PCT application designated the US and listed inventor Philip Scanlan, who is the sole inventor listed on the present US application. The PCT application was published in English and is directed to the same invention; in fact, Examiner will note that the specifications of the present application and the PCT publication are identical. The PCT application was entitled to, and was granted, an international filing date of March 5, 2002 under PCT Article 11. The present application was filed on September 4, 2003 during the pendency of the PCT application, i.e. before the national entry deadline of September 6, 2003. To support the dates listed on the PCT application, and the identicity of the invention disclosed, Applicant attaches as Exhibit C a certified copy of Applicant's Australian provisional specification.

Rejection Under 35 U.S.C. 102

Examiner rejected claims 1–9 based on Levin, U.S. Patent Application Publication No. 2004/0102957. However, since the present application is entitled to priority under 35 U.S.C. to PCT Application Serial No. PCT/AU02/00249, Applicant respectfully submits that Levin is not prior art. Specifically, Levin was published on May 27, 2004. However, Applicant's filing date

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in Australia was March 6, 2001 and Applicant's international filing date was March 5, 2002.

These dates are well before Levin's publication date. In fact, these dates predate Levin's earliest priority date, November 22, 2002. Therefore, Levin is not prior art under 35 U.S.C. 102.

While the references have already been disclosed on Applicant's Information Disclosure Statement, Applicant attaches hereto a copy of Applicant's International Search Report, included in Exhibit B, and a copy of Applicant's International Preliminary Examination Report ("IPER"), as Exhibit D. As noted in the IPER, the designated examination authority, the Australian Patent Office, found the claims to meet the novelty, inventive step, and industrial applicability requirements under the PCT. While Applicant acknowledges that the standards of novelty and inventive step under the PCT differ from the standards of novelty and non-obviousness under the Patent Act, Applicant respectfully submits that the prior art simply did not disclose or suggest the claimed invention at the time of filing.

Applicant respectfully submits that all pending claims are in condition for allowance. Should Examiner believe that a telephone interview would advance the prosecution of this application, the undersigned would invite and request such a telephone interview.

Respectfully submitted,
MORISHITA LAW FIRM, LLC

Dated: February 2, 2004

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